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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 JANET MIRIAM BRIDGES,) NO. CV 16-1130-E
12 Plaintiff,)
13 v.) MEMORANDUM OPINION
14 CAROLYN W. COLVIN, ACTING) AND ORDER OF REMAND
15 COMMISSIONER OF SOCIAL SECURITY,)
16 Defendant.)
17

18 Pursuant to sentence four of 42 U.S.C. section 405(g), IT IS
19 HEREBY ORDERED that Plaintiff's and Defendant's motions for summary
20 judgment are denied and this matter is remanded for further
21 administrative action consistent with this Opinion.
22

23 PROCEEDINGS
24

25 On February 18, 2016, Plaintiff filed a complaint seeking review
26 of the Commissioner's denial of disability benefits. On April 5,
27 2016, the parties filed a consent to proceed before a United States
28 Magistrate Judge. On July 13, 2016, Plaintiff filed a motion for

1 summary judgment. On October 27, 2016 Defendant filed "Defendant's
2 Memorandum, etc.," which this Court construes as a cross-motion for
3 summary judgment. The Court has taken the motions under submission
4 without oral argument. See L.R. 7-15; "Order," filed February 19,
5 2016.

6
7 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**
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9 Plaintiff asserts disability since May 28, 2008, based largely on
10 allegedly extreme sensitivity to synthetic fumes and odors, following
11 workplace exposure to trichloroethylene ("TCE") (Administrative Record
12 ("A.R.") 55-70, 334, 1033-57). The Court previously remanded the case
13 for further administrative proceedings because of material ambiguities
14 and inconsistencies in the Administrative Law Judge's previous adverse
15 decision. See A.R. 1124-31 (Memorandum Opinion and Order of Remand in
16 Bridges v. Colvin, CV 13-5618-E); see also A.R. 1138 (Appeals
17 Council's subsequent remand order). The Administrative Law Judge
18 ("ALJ") previously had found, inter alia, that Plaintiff: (1) has
19 severe "multiple chemical sensitivity syndrome, asthma extrinsic, and
20 migraine headaches" (A.R. 17); (2) retains the residual functional
21 capacity to perform light work "except she should avoid exposure to
22 fumes, dust, and industrial pollutants . . ." (A.R. 19); and (3) with
23 this capacity, Plaintiff could perform clerical jobs (A.R. 25
24 (purportedly adopting vocational expert testimony at A.R. 70-72)).
25 The ALJ's previous hypothetical questioning of the vocational expert
26 had failed to describe accurately the residual functional capacity the
27 ALJ had found to exist. Instead, the ALJ's questioning had referenced
28 "a work environment that's relatively free of dust and fumes, . . .

1 the kinds of . . . fumes and dust that you're exposed to in a . . .
2 manufacturing situation" (A.R. 70-71).

3
4 Following remand, the same Administrative Law Judge held another
5 hearing and reviewed additional evidence (A.R. 1030-1511). The ALJ
6 once again found Plaintiff not disabled (A.R. 992-1020). The ALJ
7 determined that Plaintiff has severe asthma and multiple chemical
8 sensitivities, but retains the residual functional capacity for light
9 work involving simple repetitive tasks "in an environment relatively
10 free of dust and fumes consistent with an office work environment as
11 opposed to a manufacturing work environment" (A.R. 995, 1001). The
12 ALJ found that, with this capacity, Plaintiff could perform clerical
13 jobs (i.e., office helper, mail clerk, and copy machine operator)
14 (A.R. 1018-19 (adopting vocational expert testimony at A.R. 1068-69)).
15 The vocational expert had testified that if a person were precluded
16 from exposure to "fumes, odors, dust, gases, ventilation, things like
17 perfume, cologne, cosmetics, carpet . . . odors [sic], [and] scents"
18 there would be no jobs that person could perform (A.R. 1070; see also
19 A.R. 72-73 (vocational expert similarly testifying at first hearing)).
20

21 The Appeals Council denied review, stating:

22
23 [T]he [ALJ's] Final Decision properly weighs the medical
24 opinions of Drs. Dahlgreen [sic], DeSouza, and Morgan, as
25 well as the remaining medical opinion evidence. . . . [T]he
26 Final Decision appropriately followed the guidance of Social
27 Security Ruling 96-7p in evaluating the credibility of the
28 claimant's allegations, identifying multiple bases that

1 undermine that credibility, and properly addressed the
2 statements provided by third parties. Further, the [ALJ]
3 properly presented the assessed residual functional capacity
4 to the vocational expert at the claimant's hearing held on
5 March 18, 2015. For these reasons, the Appeals Council
6 concludes that the Final Decision identified and properly
7 addressed the insufficiencies identified by the court.

8
9 (A.R. 978-81 (internal citations omitted)).

10
11 **STANDARD OF REVIEW**

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13 Under 42 U.S.C. section 405(g), this Court reviews the
14 Administration's decision to determine if: (1) the Administration's
15 findings are supported by substantial evidence; and (2) the
16 Administration used correct legal standards. See Carmickle v.
17 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008). Substantial
18 evidence is "such relevant evidence as a reasonable mind might accept
19 as adequate to support a conclusion." Richardson v. Perales, 402 U.S.
20 389, 401 (1971) (citation and quotations omitted); see Widmark v.
21 Barnhart, 454 F.3d 1063, 1067 (9th Cir. 2006).

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DISCUSSION

The ALJ has twice accepted Plaintiff's contention that she suffers from severe multiple chemical sensitivity (A.R. 17, 995).¹ In the first decision, the ALJ found that Plaintiff should avoid exposure to fumes, dust, and industrial pollutants (A.R. 19). After remand, the ALJ found that Plaintiff could work "in an environment relatively free of dust and fumes consistent with an office work environment" (A.R. 1001). In reaching this conclusion, the ALJ analyzed the

¹ For a general discussion of the diagnosis of multiple chemical sensitivity, see Gibbard v. Linn-Bento Housing Authority, 219 F. Supp. 2d 1130 (D. Or. 2002).

Occupational and environmental medicine physician Dr. James Dahlgren authored a letter dated March 24, 2010, wherein he stated that Plaintiff experiences Multiple Chemical Sensitivity, "whereby brief exposures to various chemicals at low doses result in central nervous system dysfunction manifested by severe headache and nausea," requiring rest for hours or days to recover (A.R. 721-22). Dr. Dahlgren opined that Plaintiff is totally disabled (A.R. 722; see also A.R. 867-68 (Dr. Dahlgren's "Physical Capacities Evaluation" for Plaintiff finding specific environmental limitations); A.R. 870-71 (letter explaining the bases for Dr. Dahlgren's findings)). The ALJ rejected Dr. Dahlgren's opinions (A.R. 1015-16).

Internist rheumatologist Dr. David Silver reviewed the record and examined Plaintiff for purposes of testifying as an expert witness in Plaintiff's separate civil litigation. See A.R. 142-251 (Dr. Silver's deposition). Dr. Silver opined that Plaintiff had suffered a "significant neurologic injury" from her TCE exposure, resulting in her chemical sensitivity, asthma, and other neurologic symptoms (A.R. 234-35; see also A.R. 973-76 (Declaration of David Silver)). Dr. Silver opined that Plaintiff was "incapable of returning to the open labor market" because Plaintiff would have "frequent episodes, whether it [sic] be related to a chemical that she is exposed to or some stimulus, be it her memory, et cetera, that she would not be considered a reliable employee" (A.R. 235, 240-41). The ALJ also rejected Dr. Silver's opinions (A.R. 1017-18).

1 extensive medical record and purportedly gave "great weight" to the
2 opinions of Drs. Levine, Soll, Harrison, Thompson, Allems, Soffer,
3 DeSouza, Morgan, and Saleh, as assertedly "consistent with the medical
4 records as a whole, findings on physical and mental examinations and
5 objective testing results" (A.R. 1001-07, 1014-18).² As explained
6 below, the ALJ's analysis does not adequately support the ALJ's
7 conclusion under the applicable standards.

8
9 **A. Summary of the Relevant Medical Opinions**

10
11 Consultative examiner Dr. Gerald Levine, an internal medicine and
12 pulmonary disease specialist, examined Plaintiff on December 11, 2008,
13 and reported no abnormalities (A.R. 600-04). Pulmonary function tests
14 assertedly were normal (A.R. 602, 606-07). Plaintiff reportedly had
15 no respiratory complaints and no documented respiratory disease (A.R.
16 603). Dr. Levine opined that Plaintiff would have no pulmonary
17 limitations (A.R. 603; see also A.R. 605 (Dr. Levine's Work Capacity
18 Evaluation form dated December 31, 2008, noting no pulmonary limits
19 and no preclusion from temperature extremes, airborne particles, gas,
20 fumes, or electromagnetic radiation)).

21
22 Occupational medicine physician Dr. Robert Harrison examined
23 Plaintiff several times between August 25, 2008, and January 22, 2009,
24 and noted continued intermittent left-sided sensory problems along the

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27 ² Elsewhere in the decision, however, the ALJ stated that
28 he had given "little weight" to other opinions rendered by some
of these same physicians (Drs. Harrison, Thompson and Saleh)
(A.R. 1014).

1 face and hands, intermittent cognitive problems, and occasional
2 headaches (A.R. 546-47, 572-73, 593-94; see also A.R. 1351 (Dr.
3 Harrison testifying that he found no objective evidence to corroborate
4 Plaintiff's subjective complaints)). Dr. Harrison diagnosed left
5 trigeminal neuralgia (A.R. 573). As of January 2009, Dr. Harrison
6 indicated that several more weeks were necessary to determine whether
7 Plaintiff's neurological symptoms would improve (A.R. 546). On
8 March 5, 2009, Dr. Harrison again examined Plaintiff and stated that
9 Plaintiff was improving with migraine treatment, confirming his
10 working diagnosis that Plaintiff had toxic chemical exposure with the
11 onset of migraine headaches (A.R. 632). Dr. Harrison authored a
12 letter dated May 18, 2009, in which Dr. Harrison diagnosed toxic
13 chemical exposure, migraine headaches, and trigeminal neuralgia, and
14 opined that Plaintiff could not return to her work as an air traffic
15 controller as a consequence of her cognitive impairment and headaches
16 (A.R. 445-46; see also A.R. 1384-85 (Dr. Harrison opining that
17 Plaintiff has nerve damage to the trigeminal nerve due to TCE exposure
18 and that her symptoms were consistent with TCE exposure)). In this
19 letter, Dr. Harrison did not offer an opinion concerning Plaintiff's
20 capacity to work at jobs other than the job of air traffic
21 controller. Dr. Harrison apparently did opine in a work capacity
22 evaluation form that as of January 22, 2009, Plaintiff's condition
23 precluded exposure to gas and fumes (A.R. 1390). Dr. Harrison also
24 opined that as of June 1, 2009, Plaintiff should have no exposure to
25 chemical solvents and fumes (A.R. 1398, 1403).

26
27 On or about January 30, 2009, Dr. Bruce Thompson, an occupational
28 medicine specialist, examined Plaintiff and reviewed the medical

1 record (A.R. 420-28). Plaintiff apparently said she occasionally
2 experienced increased sensitivity to smell (A.R. 422). Reportedly,
3 her cardiovascular and neurological examinations were largely normal,
4 and Dr. Thompson referenced no environmental restrictions (A.R. 425-29
5 (limiting Plaintiff only to non "safety-sensitive work"); see also
6 A.R. 543-45 (supplemental opinion dated March 5, 2009, opining that it
7 was unlikely that Plaintiff's complaints of mental lapses and speech
8 syntax were due to TCE exposure)). Dr. Thompson prepared a Work
9 Capacity Evaluation form dated January 30, 2009, which checks no
10 environmental limitations (i.e., no preclusions from temperature
11 extremes, airborne particles, gas, fumes, or electromagnetic
12 radiation) (A.R. 623).³

13
14 Treating neurologist Dr. Mark Saleh authored a letter dated
15 April 16, 2009, in which Dr. Saleh opined that Plaintiff's sensory and
16 cognitive symptoms were migraine equivalents triggered by toxic
17 exposure (A.R. 454). Dr. Saleh reportedly had treated Plaintiff with
18 medication which gave Plaintiff "some improvement" (A.R. 454). Dr.
19 Saleh opined that it would not be safe for Plaintiff to return to her
20 work as an air traffic controller given her cognitive impairment (A.R.
21 454; see also A.R. 455-60 (Dr. Saleh's treatment notes from January,
22 February, March and April 2009 reflecting minimal findings on
23 examination but reports of cognitive and speech issues)). Plaintiff

24
25 ³ Dr. Harrison reviewed Dr. Thompson's January 30, 2009
26 evaluation and, in a letter dated April 13, 2009, disagreed with
27 certain of Dr. Thompson's conclusions (A.R. 439-40). Dr.
28 Harrison disagreed that Plaintiff's transient trigeminal
neuralgia secondary to exposure to TCE had resolved, and also
disagreed with Dr. Thompson's conclusion that Plaintiff's
complaints were not due to TCE exposure (A.R. 439).

1 returned to Dr. Saleh on May 14, 2009, reporting improvement on
2 medications, feeling cognitively "clearer" and having less stuttering,
3 with identifiable triggers of wine consumption, stress/anger, and
4 being overly tired (A.R. 652). Dr. Saleh continued Plaintiff's
5 current medications (A.R. 652). Plaintiff returned on July 20, 2009,
6 and reported worsening disorientation, which Dr. Saleh thought might
7 be a medication side effect or a residual symptom, so he decreased her
8 medication (A.R. 653). Plaintiff returned on August 20, 2009,
9 reporting worsening stuttering on decreased medication, as well as
10 disturbed sleep (A.R. 654). Dr. Saleh indicated that Plaintiff's
11 cognitive and sensory symptoms seemed well controlled (A.R. 654).
12 Plaintiff returned on July 12, 2010, reporting improvement in
13 cognition and with her stuttering (A.R. 858). When Plaintiff returned
14 again on November 19, 2010, she reported "breakthrough events" in
15 association with exposure to strong chemical odors such as facial
16 paralysis, cognitive clouding, and stuttering (A.R. 856-57). Dr.
17 Saleh opined that strong odors may trigger Plaintiff's migraines, and
18 told Plaintiff to continue to avoid exposure to strong odors (A.R.
19 856).

20
21 Dr. Thomas Allems examined Plaintiff, reviewed the medical
22 record, and prepared an "Internal Medicine/Occupational Medicine and
23 Toxicology Referee Evaluation" dated February 5, 2010 (A.R. 677-96).
24 Dr. Allems described Plaintiff's condition as having a "distinctly
25 functional (psychologically mediated, hypersomatic) flavour" "not
26 related to any organic effect" of the TCE exposure (A.R. 689). Dr.
27 Allems did observe Plaintiff begin to stutter and to adopt "a rather
28 bizarre syncopated speech pattern" for which Dr. Allems discerned no

1 neurological explanation (A.R. 1411, 1419). Unlike other doctors, Dr.
2 Allems opined, inter alia, that: (1) Plaintiff's symptoms are
3 "dominated by psychological factors and are unexplained on a medical
4 or toxicological basis"; (2) TCE exposure would not explain a
5 "migraine equivalent" diagnosis; and (3) Plaintiff has never had
6 "trigeminal neuralgia" (A.R. 693-94). Dr. Allems agreed that
7 Plaintiff is unable to work as an air traffic controller, and offered
8 no other opinion concerning Plaintiff's ability to work or need for
9 environmental limitations (A.R. 693-95).

10
11 Consultative neurologist Dr. Robin Soffer prepared a neurological
12 evaluation of Plaintiff dated July 22, 2010 (A.R. 753-57). Plaintiff
13 reportedly complained of cognitive deficits, facial numbness,
14 headaches, and tremors since her TCE exposure, and specifically said
15 she could not return to work due to a "new sensitivity" in that she
16 could not tolerate carpet odors, air fresheners or perfume (A.R. 753).
17 According to Dr. Soffer, examination results were largely normal (A.R.
18 755-56). Dr. Soffer, diagnosed gastroesophageal reflux disease (A.R.
19 756). Dr. Soffer opined that Plaintiff could work in a place
20 "relatively fume and dust free and well ventilated," and could take
21 public transportation (A.R. 756).

22
23 State agency review physician Dr. DeSouza prepared a "Physical
24 Residual Functional Capacity Assessment" form dated September 2, 2010
25 (A.R. 771-76). Dr. DeSouza noted environmental restrictions for
26 avoiding moderate exposure to "[f]umes, odors, dusts, gases, poor
27 ventilation, etc." due to "restrictive lung disease" (A.R. 775). On
28 March 8, 2011, State agency review physician Dr. B. Morgan agreed with

1 Dr. DeSouza's residual functional capacity assessment (A.R. 865).

2
3 Plaintiff presented to Dr. Mark Soll on February 8, 2012,
4 complaining of a cough (A.R. 878-79). Dr. Soll diagnosed asthma,
5 allergic rhinitis due to pollen, and unspecified chest pain, and
6 prescribed an inhaler (A.R. 878-79). Dr. Soll opined that Plaintiff's
7 asthma is "mild to moderate in severity but not disabling" (A.R.
8 879).⁴

9
10 **B. The ALJ Erred in Failing Adequately to Explain How He**
11 **Determined the Particular Environmental Limitations in**
12 **Plaintiff's Residual Functional Capacity Assessment.**
13

14 Although the ALJ purported to give "great weight" to the above-
15 summarized medical opinions in determining that Plaintiff could
16 perform work, the ALJ did not explain adequately how those seemingly
17 conflicting opinions support the ALJ's residual functional capacity
18 assessment. The ALJ must "consider" and "evaluate" every medical
19 opinion of record. 20 C.F.R. § 404.1527(b) and (c); see Social
20 Security Ruling ("SSR") 96-8p ("If the RFC assessment conflicts with
21 an opinion from a medical source, the adjudicator must explain why the
22 opinion was not adopted").⁵ In this consideration and evaluation, an
23 ALJ "cannot reject [medical] evidence for no reason or the wrong
24

25 ⁴ Dr. Soll had ordered a "Pulmonary Function Study and
26 Methacholine Challenge" on November 7, 2011, which showed a
"moderately positive methacholine challenge" (A.R. 882-95).

27 ⁵ Social Security rulings are binding on the
28 Administration. See Terry v. Sullivan, 903 F.2d 1273, 1275 n.1
(9th Cir. 1990).

1 reason." Cotter v. Harris, 642 F.2d 700, 706-07 (3d Cir. 1981); see
2 Day v. Weinberger, 522 F.2d 1154, 1156 (9th Cir. 1975) (ALJ may not
3 make his or her own lay medical assessment). As demonstrated by the
4 above summary, the medical opinions on which the ALJ purportedly
5 relied are inconsistent, and no opinion specifically endorses the
6 particular environmental limitations the ALJ defined in the residual
7 functional capacity assessment.

8
9 The opinions of Drs. Levine and Thompson could support a
10 determination that Plaintiff has no environmental restrictions, and
11 therefore might also support the more limiting environmental
12 restrictions the ALJ adopted. However, the ALJ did not purport to
13 rely only on the opinions of Drs. Levine and Thompson.⁶ The ALJ also
14 purported to rely on the conflicting opinions of Drs. Harrison, Saleh,
15 Soffer, DeSouza, and Morgan, although the ALJ did not adopt all the
16 limitations set forth by these doctors. Perhaps most significantly,
17 there is no competent evidence in the record suggesting that a
18 limitation to an environment "relatively free of dust and fumes"
19 "consistent with an office work environment" accurately encompasses
20 the environmental limitations any of these doctors assessed. The ALJ
21 was not free to accept or reject any of these doctors' conclusions
22 concerning Plaintiff's environmental limitations without explaining
23 the ALJ's reasons for doing so. Without adequate explanation, without
24 specific support from an expert source, and without potentially
25 synthesizing testimony from a medical expert, the ALJ apparently
26

27 ⁶ The Court observes that the opinions of Drs. Levine and
28 Thompson were given relatively early in Plaintiff's treatment
history.

1 defined his own particular environmental limitations for Plaintiff.
2 This was error. See Joost v. Colvin, 2016 WL 3865924 (W.D. Wash. July
3 12, 2016) (ALJ erred in failing fully to account for medical opinions
4 in determining claimant's residual functional capacity where claimant
5 had been diagnosed with multiple chemical sensitivity); Jeffries v.
6 Colvin, 2013 WL 6385617 (D. Ariz. Dec. 6, 2013) (same).

7
8 An error "is harmless where it is inconsequential to the ultimate
9 nondisability determination." Molina v. Astrue, 674 F.3d 1104, 1115
10 (9th Cir. 2012) (citations and quotations omitted). In light of the
11 vocational expert's testimony, the Court cannot deem the ALJ's errors
12 to have been harmless.

13
14 **C. Remand is Appropriate.**

15
16 Remand is appropriate because the circumstances of this case
17 suggest that further administrative review could remedy the ALJ's
18 errors. McLeod v. Astrue, 640 F.3d 881, 888 (9th Cir. 2010); see also
19 INS v. Ventura, 537 U.S. 12, 16 (2002) (upon reversal of an
20 administrative determination, the proper course is remand for
21 additional agency investigation or explanation, except in rare
22 circumstances); Dominquez v. Colvin, 808 F.3d 403, 407 (9th Cir. 2015)
23 ("Unless the district court concludes that further administrative
24 proceedings would serve no useful purpose, it may not remand with a
25 direction to provide benefits"); Treichler v. Commissioner, 775 F.3d
26 1090, 1101 n.5 (9th Cir. 2014) (remand for further administrative
27 proceedings is the proper remedy "in all but the rarest cases");
28 Garrison v. Colvin, 759 F.3d 995, 1020 (9th Cir. 2014) (court will

1 credit-as-true medical opinion evidence only where, inter alia, "the
2 record has been fully developed and further administrative proceedings
3 would serve no useful purpose"); Harman v. Apfel, 211 F.3d 1172, 1180-
4 81 (9th Cir.), cert. denied, 531 U.S. 1038 (2000) (remand for further
5 proceedings rather than for the immediate payment of benefits is
6 appropriate where there are "sufficient unanswered questions in the
7 record").

8
9 There remain significant unanswered questions in the present
10 record. Cf. Marsh v. Colvin, 792 F.3d 1170, 1173 (9th Cir. 2015)
11 (remanding for further proceedings to allow the ALJ to "comment on"
12 the treating physician's opinion). Moreover, since it appears from
13 the medical evidence that Plaintiff's condition may have been
14 worsening over time, it is not clear on the present record whether the
15 ALJ would be required to find Plaintiff disabled for the entire
16 claimed period of disability even if the more restrictive medical
17 opinions were fully credited. See Luna v. Astrue, 623 F.3d 1032, 1035
18 (9th Cir. 2010).

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1 **CONCLUSION**

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3 For all of the foregoing reasons,⁷ Plaintiff's and Defendant's

4 motions for summary judgment are denied and this matter is remanded

5 for further administrative action consistent with this Opinion.

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7 LET JUDGMENT BE ENTERED ACCORDINGLY.

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9 DATED: December 8, 2016.

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12 /s/

13 CHARLES F. EICK

14 UNITED STATES MAGISTRATE JUDGE

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25 ⁷ The Court has not reached any other issue raised by

26 Plaintiff except insofar as to determine that reversal with a

27 directive for the immediate payment of benefits would not be

28 appropriate at this time. "[E]valuation of the record as a whole

creates serious doubt that [Plaintiff] is in fact disabled."

Garrison v. Colvin, 759 F.3d at 1021.